

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.459/2007

Sita Ram Sharma Vs. State of Rajasthan & Ors.

Date of Order :: September 20, 2007.

HON'BLE THE CHIEF JUSTICE MR.J.M. PANCHAL
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Tanveer Ahmed for the appellant.

The instant appeal is directed against judgment dated November 24, 2006 rendered by the learned Single Judge in S.B. Civil Review Petition no.151/2006 by which the order dated June 2, 2005 in S.B. Civil Writ Petition no.6316/2007 is modified by holding that there is no requirement of complying with the directions issued for consideration of the case of the appellant for giving regular appointment and payment of pay scale with effect from December 1, 1997.

The appellant was engaged as Class IV employee on March 1, 1963. According to him, he was performing his duties diligently but was not paid regular pay scale. Therefore, he instituted S.B. Civil Writ Petition no.6316/1997. The learned Single Judge by order dated June 2, 2005 directed the respondents to consider the case of the appellant for regular appointment on the post of Class IV and grant him minimum pay scale with effect from December 1, 1997. The said order was not complied with and, therefore, the appellant filed contempt petition being S.B. Civil Contempt Petition no.164/2006 wherein the Court by order dated July 4, 2006 directed the respondents to comply with the judgment dated June 2, 2005.

Thereafter the respondents filed an application to review the original judgment dated June 2, 2005 rendered in S.B. Civil Writ Petition no.6316/1997 contending that on the date on which the directions were given by the learned Single Judge, the appellant had already attained the age of superannuation. After hearing the learned counsels for the parties, the learned Single Judge has modified the judgment dated Jun 2, 2005 which has given rise to the instant appeal.

This Court has heard the learned counsel for the appellant and taken into consideration the documents forming part of the petition.

From the record of the case, it is evident that the correct date of birth was never mentioned by the appellant. It is his case that he was for the first time employed as Class IV employee on March 1, 1963. At that time his age must not have been less than 20 years. Therefore, on the date of decision of the learned Single Judge, his age would be 62 years. Under the circumstances, the direction which was given by the learned Single Judge to the respondents to consider the case of the appellant for regular appointment on the post of Class IV employee and pay him minimum wages from December 1, 1997 could not have been issued. There was an error apparent on the face of the record which is rectified by the learned Single Judge while exercising powers analogous to Order 47 Rule 1 of the Code of Civil Procedure, 1973. This Court is of the firm opinion that if the power of review had not been exercised, the direction would have resulted into miscarriage of justice.

On review of facts, this Court finds that no case is made out by the learned counsel for the appellant to interfere with the impugned order and, therefore, the appeal which lacks merits deserves dismissal.

For the foregoing, the appeal fails and is dismissed.

(MOHAMMAD RAFIQ), J.

(J.M. PANCHAL), CJ.

Skant/-